



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 10, 1996

Ms. LaRonica Lightfoot
Assistant City Attorney
City of Dallas
City Hall
Dallas, Texas 75201

OR96-0916

Dear Ms. Lightfoot:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 39555.

On February 14, 1996, the Dallas Police Department received an open records request for all records relating to an alleged sexual assault case. On March 18, 1996, the City of Dallas (the "city") asked this office to render an open records decision on whether the city may withhold from required public disclosure the requested information, or portions thereof, pursuant to sections 552.101 and 552.103(b) of the Government Code.

Section 552.301(a) of the Government Code provides that:

A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. *The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th calendar day after the date of receiving the request.* (Emphasis added).

Since the city received the request on February 14, 1996, and requested a decision from this office on March 18, 1996, the city failed to meet the ten-day period mandated by section 552.301(a). Because the city did not request an attorney general decision within the time provided by section 552.301(a), the requested information is presumed to be public information. Gov't Code § 552.301; see *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ).

To overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. A compelling reason that overcomes the presumption of openness will generally only be found when the information falls within an exception to disclosure that is designed to protect the interests of a third party. See Open Records Decision No. 552. (1990).

You assert that section 552.103(b) excepts from required public disclosure all of the requested information. Section 552.103 of the Government Code, the litigation exception, protects a governmental body's litigation interests by excepting from required public disclosure information that relates to pending or reasonably anticipated litigation to which the state or a political subdivision is or may be a party. The exception benefits the governmental body rather than any third party. The fact that information may fall within the section 552.103 exception does not alone constitute a compelling reason sufficient to overcome the presumption of openness that arises when a governmental body fails to request an attorney general decision with ten days of receiving an open records request. See Open Records Decision No. 591 (1991) at 2, n.2. Consequently, the city may not withhold the requested information from required public disclosure based on section 552.103 of the Government Code.

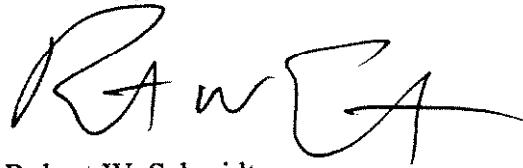
You also assert the privacy interests of the sexual assault victim. Section 552.101 of the Government Code protects information that is "confidential by law," and includes information protected by the common-law right of privacy.¹ An individual's common-law right to privacy is a compelling interest that overcomes the presumption that the information is public. Open Records Decision No. 473 (1987). The identity of a victim of sexual assault is protected from required public disclosure on the basis of the common-law right to privacy. See Open Records Decision Nos. 628 (1994), 339 (1982). Additionally, if information that identifies a sexual assault victim is inextricably intertwined with other releasable information, a governmental body must withhold all information necessary to protect the common-law privacy of the victim. Open Records Decision No. 393 (1983) at 2. In the request for information that was filed with the city,

¹*Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. See *id.*

the requestor identified the victim of the alleged sexual assault. We believe that, in this instance, withholding only identifying information from the requestor would not preserve the victim's common-law right to privacy. We conclude, therefore, that the city must withhold the entire offense report pursuant to section 552.101.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'RWS' followed by a stylized flourish.

Robert W. Schmidt
Assistant Attorney General
Open Records Division

RWS/rho

Ref.: ID# 39555

Enclosures: Submitted documents

cc: Mr. Gene Freudenberg
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(w/o enclosures)